(1)

No. Supreme Court, U.S.
FILED

IN THE 95 1555 JAN 2 - 1996

Supreme Court of the United States

October Term, 1995

JOHN R. CONNOR,

Petitioner,

against

EDWARD J. FLYNN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

JOHN R. CONNOR
Petitioner Pro Se
380 Wyoming Avenue
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QUESTION PRESENTED

1. Whether a court which has decided a motion to revive a dormant judgment in advance of its noticed return date, and does so without notice to defendant and without considering defendant's opposition papers, has substantially violated the defendant's due process rights under the Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDING

JOHN R. CONNOR, Petitioner Pro se

380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

EDWARD J. FLYNN, Respondent (Deceased)

(John A. Lombardi, Esq. Assignee
of Plaintiff Edward J. Flynn)*
603 Springfield Avenue
P.O. Box 130
Summit, New Jersey 07901

---

*References to John A. Lombardi, Esq. in this petition as respondent are strictly editorial inasmuchas he was not a party in the captioned proceedings in the New Jersey Courts.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

In the matter of

JOHN R. CONNOR, Petitioner,

v.

EDWARD J. FLYNN, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioner John R. Connor hereby petitions the United States Supreme Court for a writ of certiorari to review the Final Order of the New Jersey Supreme Court in this case.

* * * * *

JURISDICTION

On June 6, 1995, the New Jersey Supreme Court entered an order, filed June 15, 1995, dismissing the within appeal for "failure to state a substantial constitutional question." (Appendix A, p. 1a). By its order dated October 2, 1995, filed October 3, 1995, the New Jersey Supreme Court denied Petitioner's motion for reconsideration. (Appendix B, p. 2a).

The jurisdiction of the United States Supreme Court is invoked under 28 U.S.C. §1257(a).

No opinions were entered in the state courts on the revival motion at issue in this petition. The orders are unreported as of this date.

CONSTITUTIONAL PROVISIONS, STATUTES AND COURT RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state * * * shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N. J. S. A. 2A:14-5 provides:

> A judgment in any court of record may be revived by proper proceedings or an action at law commenced thereon within 20 years next after the date thereof, but not thereafter.

N. J. Sup. Ct. C.P.R. 4:50-1 provides, in perinent part:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons. . . .

STATEMENT OF THE CASE

This litigation originated over 24 years ago when, on November 4, 1971, Petitioner was sued by his uncle, Edward J. Flynn, for malicious libel and slander because of certain statements contained in pleadings Petitioner had filed in a separate suit entitled Connor v. Flynn, C-2565-68, then pending in the Superior Court of New Jersey. In the latter (accounting) suit, Petitioner, who is not an attorney, was, with the court's permission, allowed to represent the plaintiff (Petitioner's mother) against the same Edward J. Flynn, following plaintiff's counsel withdrawal from the accounting suit after trial but before final judgment. The defamation was alleged to have occurred while Petitioner was representing the plaintiff in Connor v. Flynn.

At no time during the pendency of this libel suit was any discovery conducted by plaintiff, who served not a single document request, interrogatory or request for admissions. No depositions were ever taken in the case. Petitioner was placed in default on July 23, 1974, and his defenses suppressed, on the technicality of a $100 check which Petitioner had issued to the clerk, which had been mishandled by Petitioner's bank as a "stop payment" and which the court refused to allow Petitioner's attorney to correct. (Though, in fact, the check was subsequently paid).

On August 16, 1974, the trial court, after a hearing during which Petitioner was not allowed to present any defenses (e.g., privilege, truth of the matter, etc.), entered a default judgment against Petitioner in the amount of $4,000 ($2,000 compensatory and $2,000 punitive damages). Successive appeals to the Appellate Division of the Superior Court and the New Jersey Supreme Court seeking to overturn the default judgment were unsuccessful. (Appendix F, p. 9a).

Since its entry in 1974, Petitioner's payments on this default judgment have amounted to no more than an eighth of the $4,000 award. The original plaintiff, who made no attempt to enforce the judgment, died on July 9, 1982. His widow, Bernice Flynn, qualified as executrix and, as sole beneficiary, succeeded to her husband's interest in the judgment. In 1984, the widow, without first moving to revive the judgment, secured a court order under the original caption compelling scheduled payments from Petitioner.

On June 11, 1988, for the sum of $1.00, the executrix assigned the judgment over to the attorney for the estate, John A. Lombardi, Esq., the same attorney who filed and prosecuted the libel action against Petitioner.

On July 5, 1994, nearly 20 years after its entry, and 6 years after the 1988 assignment, Respondent Lombardi served a motion to revive and update the 1974 libel judgment. (Appendix E, p. 7a).

Respondent's moving papers were filed in the originally-captioned action, while Respondent Lombardi moved in the signatory, non-party capacity of "Assignee of Plaintiff, Edward J. Flynn." (Appendix E, p. 8a). The notice of motion reads:

> PLEASE TAKE NOTICE, that I will apply to the Superior Court of New Jersey * * * on Friday, July 29, 1994 at 9:00 A.M. or as soon thereafter as the matter may be considered by the court, for the entry . . .

(Appendix E, p. 7a) (Emphasis added). Respondent's moving papers were received by Petitioner, via first-class mail, on

Monday, July 18, 1994. (A certified mailing was received at the post office on July 23, 1994).

On July 22, 1994, Petitioner visited the Essex County Clerk's office and was advised that the originally-noticed return date of "July 29, 1994" was not a motion day in the Law Division and that the matter would not be listed for hearing until the next motion day, or at a later date. Petitioner was given a copy of the 1994 Law Division Motion Calendar (Appendix H, p. 12a), which he forwarded to Respondent on July 28, 1994 (Appendix G, p. 11a), along with a service copy of his opposition papers which were filed by the clerk on July 28, 1994 - one day before the originally-noticed return date of July 29, 1994. (Appendix I, p. 13a).

Petitioner's opposition papers contained an answer to Respondent's allegations, a statement of separate defenses and argument in opposition: 1) jurisdictional (failure of the judgment's current owner to prosecute its revival of his own name); 2) waiver of right of revival (failure of executrix to revive judgment subsequent to husband's death and before assignment to Respondent, while prosecuting same in decedent husband's name); and 3) inequitable conduct (Respondent's submission of a heavily-doctored transcript to the court in Connor v. Flynn, C-2565-68, to support his application to have that court remove Petitioner from continued representation of his mother in that suit)[1].

---

[1]The transcript of an August 17, 1973 hearing before the New Jersey Division of Alcoholic Beverage Control, corrected by Petitioner on the basis of a private tape recording, was used by Respondent to support his claim that Petitioner was arrogant, hostile, irrational and arbitrary and should no longer be allowed to represent his mother in the accounting suit.

On or about August 2, 1994, Petitioner was advised by Respondent that the revival motion had been decided by the court on July 22, 1994 - a full week before its originally-noticed return date of July 29, 1994. No notice was given Petitioner of this earlier return date and his opposition papers were not considered by the court. A copy of the order reviving and updating the judgment was received by Petitioner on August 10, 1994 which, after reciting that "due notice" had been given defendant, granted Respondent's application for revival as unopposed and updated the libel judgment in the amount of $11,489.92. (Appendix J. p. 15a). Upon Respondent's inquiry, the court then proceeded to relist the matter for August 19, 1994, a motion day, albeit without specifying the nature of the proceeding.

On August 12, 1994, Petitioner, by letter, requested that "the court, sua sponte, vacate its order of July 22, 1994 in order that the status quo ante is restored, placing the [revival] motion before the court, and enabling briefing to go forward in accordance with R. 1:6-3." (Appendix K. p. 17a). Not receiving an answer, Petitioner, on August 17, 1994, again wrote the court to advise that he had "no motion presently pending before the court and that [he] reserve[d] the right to file a R. 4:50 vacation motion with respect to the July 22, 1994 order of revival." (Appendix L, p. 19a). Because of the failure of the court to specify the nature of the hearing it had planned, and in view of the absence of any pending motion from either party, Petitioner did not attend the hearing.

On August 19, 1994, the court affirmed its earlier July 22, 1994 order (Appendix M, p. 21a), predicating its action upon its contention that Petitioner had applied to "vacate or modify" the July 22, 1994 order:

> This matter being opened to the Court by Defendant, John R. Connor, on application to vacate or modify the Order Reviving And Updating Judgment entered in the above matter on July 22, 1994. . .

(Appendix N, p. 22a). The order of affirmation remains unsigned, pending the disposition of Petitioner's appeal of the July 22, 1994 order.

The federal question was first raised by Petitioner in his merits brief filed in the Appellate Division of the Superior Court, however that court dismissed the appeal on non-merits (i.e., interlocutory) grounds. The question was again raised before the New Jersey Supreme Court, which declined review.

AFFIDAVIT

State of New Jersey)
) SS:
County of Essex)

Appeared before me John R. Connor, of full age, who, first being duly sworn upon his oath, deposes and says that:

1. The facts as stated by me in the foregoing STATEMENT OF THE CASE are true and correct.

/s/ John R. Connor
(Signature of Affiant)

Sworn to and subscribed before me
this 2nd day of January, 1996

/s/ Brenda Y. Green
NOTARY PUBLIC

Brenda Y. Green
Notary Public of New Jersey
My Commission Expires Mar. 30, 1997

REASONS FOR GRANTING THE WRIT

I. The within application for a writ of certiorari to review a final decision of the New Jersey Supreme Court is made under Supreme Court Rule 10(c); specifically, that the latter court has decided an important federal, due process question that is in conflict with relevant decisions of the United States Supreme Court.

The Supreme Court, in numerous decisions, has historically held that: "[t]he fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394 (1914). An essential requirement of due process in any proceeding to be accorded finality is notice "reasonably calculated, under all the circumstances, to apprise interested parties of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 314 (1950). See also: Greene v. Lindsay, 456 U.S. 444, 449-450 (1980). The notice must also afford a reasonable time for those interested to make their appearance. Roller v. Holly, 176 U.S. 398 (1900). "[W]hen notice is a person's due, process which is a mere gesture is not due process." Mullane, supra, at 315.

The Supreme Court "has long * * * recognized that 'fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. . . [And n]o better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.'" Fuentes v. Shevin, 407 U.S. 67, 81 (1972) (quoting from concurring opinion of Justice Frankfurter in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170-172 (1951)).

Throughout the decisions cited supra, the Supreme Court, with black-letter consistency, has repeatedly held that a fundamental due process requirement is the opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, 424 U.S. 319, 333 (1976). See also: Logan v. Zimmerman Brush Co., 455 U.S. 422, 437 (1982). Furthermore, there must be "no hazard of arbitrary decision making [which would] be held violative of due process." Wolff v. McDonald, 418 U.S. 539, 571 (1974). (Emphasis added).

In Armstrong v. Manzo, 380 U.S. 545 (1965) the Supreme Court, after granting certiorari, reversed and remanded a Texas court's decision entering an adoption decree under circumstances where the natural father was given no notice of the adoption petition. The Court also addressed the issue (similarly present in Petitioner's case) of "whether the subsequent hearing on the petitioner's motion to set aside the decree served to cure its constitutional invalidity." Id., at 550. The Court, answering the question in the negative, stated:

> Had the petitioner been given the timely notice which the Constitution requires, the Manzos, as the moving parties, would have had the burden of proving their case as against whatever defenses the petitioner might have interposed....
>
> Instead, the petitioner was faced on his first appearance in the courtroom with the task of overcoming an adverse decree entered by one judge, based upon a finding of non-support made by another judge. As the record shows, there was placed upon the petitioner the burden of affirmatively showing that he had contributed to the support of his daughter to the limit of his financial ability over the period involved. The burdens thus

> placed upon the petitioner were real, not purely theoretical. For 'it is plain that where the burden of proof lies may be decisive of the outcome.' Speiser v. Randall, 357 U.S. 513, 525. Yet these burdens would not have been imposed upon him had he been given timely notice in accord with the Constitution.
>
> A fundamental requirement of due process is 'the opportunity to be heard.' Grannis v. Ordean, 234 U.S. 385, 394. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. The trial court could have fully accorded this right to the petitioner only by granting his motion to set aside the decree and consider the case anew. Only that would have wiped the slate clean. Only that would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. His motion should have been granted.

Id., at 551-552. See also: Goldberg v. Kelly, 397 U.S. 254 (1970) (Supreme Court affirmed District Court of Southern District of New York's decision holding, in a welfare case, that only a pre-termination evidentiary hearing satisfied the XIV Amendment, rejecting state's argument that the combination of a post-termination hearing and informal pre-termination review was constitutionally sufficient).

******

The principal, operative fact for determination of this petition appears on the first page of Respondent's Notice of Motion to Revive and Update Judgment whereon he listed a return date of "July 29, 1994 or as soon thereafter as the matter may be considered by the Court...." (Exhibit E, p. 7a). (Emphasis

added). This language in the notice controls the time when the court could entertain the revival motion and certainly precludes an earlier return date without notice to defendant. Petitioner had a right to rely on the "thereafter" phraseology contained in the notice, especially when, on July 22, 1994, he was advised by the Clerks' office that July 29, 1994 was not a motion day in the Law Division of the Superior Court (Exhibit H. p. 12a) and that "the matter would not be listed for hearing until the next motion day, or at a later date." (See: Statement of Facts, p. 6).

Assuming, arguendo, that Petitioner's originally-noticed return date of July 29, 1994 was a bona fide date, the fact remains that Petitioner's opposition papers were served and filed on July 28, 1994 (Exhibit I, p. 13a) - one full day before the return day of July 29, 1994.

The matter of late filings has been resolved by New Jersey courts. In Tyler v. N.J. Auto. Full Ins., 228 N.J. Super. 463 (App. Div. 1988), the Appellate Division of the Superior Court of New Jersey reversed and remanded an appeal for entry of judgment in favor of the defendant under the circumstances where his opposition papers were not considered by the trial court due to a late submission and where the motion was granted without opposition. The appellate court stated:

> Such decisions should be made where possible on the merits. It is a mistaken exercise of judgment to close the courtroom doors to a litigant whose opposition papers are late but are in the court's hands before the return day for a motion which determines the meritorious outcome of a consequential lawsuit. 'Swift justice demands more than just swiftness.' Henderson v. Bannan, 256 F.2d 363, 390 (Potter Stewart, J., dissenting) (6 Cir. 1958). Late filings of motion papers can be met with a variety

> of judicial responses afforded by existing court rules. Among them are sanctions designed to discourage late filings without determining the outcome of a case.

Id., at 468.

Consequently, under Tyler, supra, assuming July 29, 1994 were a valid date, Petitioner would still have been entitled to have his opposition papers considered by the court, albeit perhaps with sanction. While the opposition papers were timely with respect to the next motion day of August 5, 1994, there was no manner in which they could ever have been timely with respect to the July 22, 1994 date - about which date Petitioner knew precisely nothing.

In its order reviving the libel judgment, the trial court demonstrated no hesitancy in perpetrating its own libel when it stated: "[t]his matter being opened to the Court * * * * on due notice to the Defendant. . . ." (Exhibit J, p. 15a), omitting mention of the fact that notice of the July 22, 1994 return date was wholly dispensed with by the court.

******

In the matter of dormant judgments, the general rule, followed in Jew Jersey, is that "a dormant judgment may be revived after the death of a party, in the name of the representative of such party, whether the deceased was the judgment creditor or the judgment debtor." 46 Am.Jur.2d, §346 Personal Representatives, at p. 531 (1994). "Although a scire facias proceeding to revive a judgment is generally not regarded as a new action, it so far partakes of the nature of a new action that the defendant may appear and plead to it in the same manner as to an action founded on an original suit * * * [i]n such answer, the defendant

may plead any legal matter of defense." Id., §360 Defensive pleadings, at pp. 537-538. In Kronstadt v. Kronstadt, 238 N.J. Super. 614 (App. Div., 1990), the Appellate Division of the Superior Court of New Jersey held:

> We note the elements to be proven when a judgment is revived are: (1) the judgment is valid and subsisting; (2) it remains unpaid in full, or, if in part, the unpaid balance; and (3) there is no outstanding impediment to its judicial enforcement, e.g., a stay, a pending bankruptcy proceeding, an outstanding injunctive order, or the like. A judgment debtor may contest the revival proceedings on such bases.

Id., at p. 618.

Under New Jersey law, "[a] judgment in any court of record may be revived by proper proceedings or an action at law commenced thereon within 20 years next after the date thereof, but not thereafter. N.J.S.A. 2A:14-5. (Emphasis added). Thus, revival in New Jersey is not a right but is an issue committed to court discretion. What is not committed to court discretion, however, is a defendant's right to oppose revival. Kronstadt, supra. That right can be - and in this case was - shockingly eliminated by the tactic of deciding the revival motion as "uncontested" a full week in advance of its noticed return date, without notice to petitioner. Such conduct therefor denied Petitioner the "opportunity to be heard," Grannis, supra, which is a fundamental requisite of due process under the XIV Amendment. The action of the trial court thus egregiously violated "fundamental fairness [and is] shocking to the universal sense of justice...." United States v. Russell, 411 U.S. 423, 432 (1972). Especially so in this case, in view of the fact that the

original (1974) judgment was similarly procured by a suppression of my defenses.

The issue remains as to whether the trial court's sua sponte conversion of Petitioner's opposition into a motion to vacate the July 22, 1994 order of revival "cure[s] its constitutional invalidity." Armstrong, supra, at p. 550. (See: Statement of Facts, pp. 7-8). Petitioner submits that such a proceeding is as legally insufficient as was the trial court's denial of the petitioner's motion to set aside the decree in Armstrong, supra (where, in contrast to Petitioner's case, a bona fide motion to vacate was indeed filed). And just as the burden of proof shifted in Armstrong against petitioner, so also does it shift in Petitioner's case. In fact, Petitioner's "right" of opposition to the revival motion is lost on a motion to vacate under applicable New Jersey Rule 4:50-1 whereat "the trial court has discretion when addressing a motion to vacate." Haber v. Haber, 253 N.J. Super. 413, 417 (App. Div., 1972).

******

A final word is reserved for the dismissal of Petitioner's appeal to the Appellate Division of the Superior Court of New Jersey on Respondent's argument that the July 22, 1994 order of revival was "interlocutory" in nature and therefor not eligible for "as of right" appellate review. As held by the Supreme Court, a final order is one which "terminates the litigation between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined." St. Louis, Iron Mountain and Southern Ry. v. Southern Express Co., 108 U.S. 24, 28-29 (1883). See also: Catlin v. United States, 324 U.S. 229, 233 (1945).

In accordance with these authorities, it is evident that the July 22, 1994 order of revival was a final order, appealable "as of right." This order wholly disposed of the issue of reviving and updating the 1974 libel default judgment. Nothing remains for any subsequent determination: no undetermined damages, attorneys' fees, etc. Respondent received precisely what he had requested from the trial court, including permission to enforce the revived judgment. Consequently, the July 22, 1994 order stands on its own as an appealable final order.

CONCLUSION

For the reasons set forth above, this Court should grant this petition for certiorari.

Respectfully submitted,

/s/ John R. Connor
John R. Connor, Pro se
Petitioner

Dated: 2 January, 1996

APPENDIX "A"
(Filed: June 15, 1995)

SUPREME COURT OF NEW JERSEY
A-209 September Term 1994
39,825

EDWARD J. FLYNN,

Plaintiff-Respondent,

v.

JOHN R. CONNOR,

Defendant-Appellant.

This matter having come before the Court on a claim of an appeal as of right based on Rule 2:2-1(a)(1), and the Court having reviewed the submissions of the parties, and good cause appearing;

It is ORDERED that the appeal is dismissed for failure to state a substantial constitutional question. See Tidewater Oil Co. v. Mayor and Council of Cartaret, 44 N.J. 338, 341-342 (1965); Piscataway Assoc., Inc. v. Township of Piscataway, 73 N.J. 546, 549 (1977).

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 6th day of June, 1995.

/s/Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX "B"
(Filed: October 3, 1995)

SUPREME COURT OF NEW JERSEY
M-142 September Term 1995
39,825

EDWARD J. FLYNN,

Plaintiff,

v. ORDER

JOHN R. CONNOR,

Defendant-Movant.

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the dismissal of defendant's appeal is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 2nd day of October, 1995.

/s/Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX "C"
(Filed: November 21, 1994)

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A -000214-94T3
MOTION NO. M -001401-94
BEFORE PART: H
JUDGE(S): SHEBELL
SKILLMAN
KLEINER

EDWARD J FLYNN
V
JOHN R CONNOR

MOTION FILED: 10/20/94 BY: EDWARD FLYNN
ANSWER(S) FILED: 11/02/94 BY: JOHN R CONNOR

SUBMITTED TO COURT: NOVEMBER 16, 1994

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 17th DAY OF November, 1994, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT	
- TO DISMISS THE APPEAL	(X) GRANTED
- FOR COUNSEL FEES AND COSTS	(X) DENIED
	(X) OTHER

SUPPLEMENTAL: The appeal is dismissed without prejudice. Counsel fees and costs are denied.

FOR THE COURT:

/s/Thomas F. Shebell, Jr.
THOMAS F. SHEBELL JR P.J.A.D.

APPENDIX "D"
(Filed: December 23, 1994)

ORDER OF MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A -214-94T3
MOTION NO. M -2150-94
BEFORE PART: H
JUDGE(S): SHEBELL
SKILLMAN
KLEINER

EDWARD J FLYNN
V
JOHN R CONNOR

MOTION FILED: 12/06/94 BY: JOHN R. CONNOR
ANSWER(S) FILED: 12/15/94 BY: EDWARD J. FLYNN

SUBMITTED TO COURT: DECEMBER 21, 1994

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 22nd DAY OF December, 1994, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR RECONSIDERATION OF M-1401-94 (X) DENIED

SUPPLEMENTAL:

FOR THE COURT:

/s/Thomas F. Shebell, Jr.
THOMAS F. SHEBELL JR P.J.A.D.

APPENDIX "E"
(Filed: July 8, 1994)

John Anthony Lombardi
603 Springfield Avenue
Summit, New Jersey 07901
(201) 273-0100
Attorney for Plaintiff

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-ESSEX COUNTRY
DOCKET NO. L-6275-71
JUDGMENT NO. J-12090-73

EDWARD J. FLYNN,

Plaintiff,

-vs.-

JOHN R. CONNOR,

Defendant.

Civil Action

NOTICE OF MOTION
TO
UPDATE AND REVIVE
JUDGMENT

TO: MR. JOHN R. CONNOR
The above-named Defendant
380 Wyoming Avenue
Millburn, New Jersey 07041

PLEASE TAKE NOTICE, that I will apply to the Superior Court of New Jersey, Law Division, Essex County, located at the Essex County Courts Building, 50 Market Street, Newark, New Jersey 07102 on Friday, July 29, 1994 at 9:00 A.M. or as

soon thereafter as this matter may be considered by the Court, for the entry of an Order reviving and updating the amount due on the judgment heretofore entered in the above entitled matter against you as Defendant and in favor of EDWARD J. FLYNN as Plaintiff, which said Judgment was entered on August 16, 1974 in the amount of $4000.00, plus interest and $122.75 in costs and assigned to the undersigned (John Anthony Lombardi) by Assignment of Judgment dated June 11, 1988 and recorded with the Clerk of the Superior Court on June 24, 1988;

The amount due on said Judgment with interest calculated to July 1, 1988 is in the amount of $11,489.92 and Judgment is sought to be entered in said amount, plus interest as permitted by law, from July 1, 1988.

The foregoing Motion is predicated on the provisions of N.J.S.A. 2A:18-44 (Revival of Docketed Judgment).

In support of said Motion counsel will rely on the attached Certification.

A form of Order sought to be entered predicated on said Motion is submitted herewith.

I hereby waive oral argument and consent to the disposition of the foregoing Motion on the pleadings submitted.

/s/ John A. Lombardi
JOHN ANTHONY LOMBARDI
Assignee of Plaintiff,
Edward J. Flynn

Dated: July 5, 1994

APPENDIX "F"
(Filed: August 16, 1974)

JOHN ANTHONY LOMBARDI
[Letterhead]

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION- ESSEX COUNTY
Docket No. L-6275-71

EDWARD J. FLYNN,	:	
Plaintiff,	:	Civil Action
v.	:	JUDGMENT
JOHN R. CONNOR,	:	
Defendant.	:	

This matter being scheduled and heard by the Court as to "Proof Only" on July 31, 1974, in the presence of John Anthony Lombardi, Esq., attorney for the plaintiff, Edward J. Flynn, and the defendant, John R. Connor having made a Motion to the Court to vacate the Order heretofore entered suppressing his defenses, entered by the Court on its own Motion on July 23, 1974, which said application was denied by the Court and said defendant was given the opportunity to examine the plaintiff's witness in connection with the proof hearing; and

The Court being satisfied that the plaintiff has proven by the evidence adduced that the defendant had maliciously libeled the plaintiff;

IT IS on this 16th day of August, 1974, ORDERED and ADJUDGED that Judgment be and the same is hereby entered in favor of plaintiff, Edward J. Flynn, and against the defendant John R. Connor, as follows:

1. for compensatory and general damages, in the sum of $2,000.00.
2. For punitive damages, in the sum of $2,000.00.
3. For costs.

/s/ James T. Owens
JAMES T. OWENS, J.S.C.

APPENDIX "G"

380 Wyoming Avenue
Millburn, New Jersey 07041
28 July, 1994

John A. Lombardi, Esq.
P.O. Box 130
603 Springfield Avenue
Summit, New Jersey 07901-0130

Re: Flynn v. Connor, Docket No. L-6275-71

Dear Mr. Lombardi:

Enclosed please find a service copy of my OPPOSITION OF DEFENDANT TO MOVANT'S MOTION TO REVIVE AND UPDATE JUDGMENT.

I have marked the paper with a return date of 5 August, 1994, in accordance with advice from the Clerk that July 29, 1994 is not a motion date in the Law Division of the Superior Court, as per attached copy of Order dated January 28, 1994 from the Chief Justice. I was advised that the motion may be heard on August 5, 1994, or at a later date.

Sincerely,

/s/ John R. Connor
JOHN R. CONNOR, Pro se

Encl:

APPENDIX "H"
SUPREME COURT OF NEW JERSEY

ORDERED, that motions in all trial courts, including the tax court, shall be heard on Fridays, or as otherwise provided by a judge pursuant to Rule 1:6-2(b), for the court year commencing July 1, 1994 and ending June 30, 1995, except that motions to be argued in the Law Division of the Superior Court shall be heard on the following days:

Friday July 8, 1994
Friday July 22, 1994
Friday August 5, 1994
Friday August 19, 1994
Friday September 9, 1994

Intervening
[Dates omitted]

Friday June 23, 1995

/s/ Robert N. Wilentz
C.J.

DATED: January 28, 1994

APPENDIX "I"
(Filed: July 28, 1994)

John R. Connor, Pro se
380 Wyoming Avenue
Millburn, New Jersey 07041
(201) 762-5587

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. L-6275-71
JUDGMENT NO. J-12090-73

In the matter of:

EDWARD J. FLYNN,	:	
Plaintiff,	:	Civil Action
vs.	:	Motion Day: 5 August, 1944[1]
JOHN R. CONNOR,	:	
Defendant.	:	ORAL ARGUMENT REQUESTED

OPPOSITION OF DEFENDANT TO MOVANT'S
MOTION TO REVIVE AND UPDATE JUDGMENT

ANSWER

Defendant, by way of answer to the allegations contained in Movant's papers:

---

[1]Corrected to 1994.

1. Denies that Movant John A. Lombardi, Esq. is the attorney for deceased plaintiff Edward J. Flynn;

2. Denies that no additional payments have been made by Defendant, beyond the $375.00 movant credits to Defendant; and,

3. Denies that Movant is an "Assignee of the Plaintiff, EDWARD J. FLYNN."

SEPARATE DEFENSES

As and for separate defenses, Defendant contends that:

1. The court lacks jurisdiction to entertain Movant's application to revive the August 16, 1974 judgment; and,

2. The Movant is not entitled to the relief he is requesting on equitable grounds.

/s/ John R. Connor
John R. Connor, Pro se

Dated: 28 July, 1994

APPENDIX "J"
(Filed: July 22, 1994)

JOHN ANTHONY LOMBARDI
[Letterhead]
Attorney for Plaintiff
and his Assignee

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION- ESSEX COUNTY
DOCKET NO. L-6275-71
JUDGMENT NO. J-12090-73

EDWARD J. FLYNN,

Plaintiff, Civil Action

v. ORDER REVIVING AND UPDATING JUDGMENT

JOHN R. CONNOR,

Defendant.

This matter being opened to the Court by John Anthony Lombardi, Esq. as Assignee of the Plaintiff, EDWARD J. FLYNN, on due notice to the Defendant, JOHN R. CONNOR for the entry of an Order Reviving and Updating the Judgment previously entered in the above entitled matter, and the Court having considered said Motion; the Certification submitted in support of the same and the provisions of N.J.S.A. 2A:18-44; and

It appearing to the satisfaction of the Court that there is presently due and outstanding on said Judgment, the sum of $11,489.92, and that the said John Anthony Lombardi, as

Assignee of the Plaintiff, EDWARD J. FLYNN is entitled to have said Judgment revived as permitted by law.

It is on this 22 day of July, 1994, ORDERED and DIRECTED as follows:

1. That the Judgment heretofore entered in the above entitled matter is revived in the amount of $11,489.92, representing the original amount of Judgment entered on August 16, 1974, plus interest as calculated and submitted to July 1, 1988, with credit for payments heretofore made by the Defendant.

2. That the said John Anthony Lombardi as Assignee of the Plaintiff, shall have leave to issue execution on said Judgment as so revived or to institute such other proceedings as he may deem appropriate to collect the said amount due.

(X) UNOPPOSED

/s/ F. Michael Giles
F. MICHAEL GILES, J.S.C.

APPENDIX "K"

380 Wyoming Avenue
Millburn, New Jersey 07041
12 August, 1994

The Honorable F. Michael Giles
Superior Court of New Jersey
Essex County Hall of Records
Room 447
Newark, New Jersey 07102

Re: Flynn v. Connor,
Docket No. L-6275-71

Dear Judge Giles:

I have been advised by my adversary, and your office, that oral argument is presently scheduled in the above matter on Friday, August 19, 1994.

In view of the premature entry of the order granting revival in this case on July 22, 1994 (I only received a copy of that order on August 10, 1994), and the failure of the Clerk to notice the revised and earlier return date of July 22, 1994, I herein request

that the court, sua sponte, vacate its order of July 22, 1994 in order that the status quo ante is restored, placing the motion before the court, and enabling briefing to go forward in accordance with R. 1:6-3.
Very truly yours,

/s/ John R. Connor
John R. Connor, Pro se

cc: John A. Lombardi, Esq.
P.O. Box 130
603 Springfield Avenue
Summit, New Jersey 07901

APPENDIX "L"

380 Wyoming Avenue
Millburn, New Jersey 07041
17 August, 1994

The Honorable F. Michael Giles
Superior Court of New Jersey
Essex County Hall of Records
Room 447
Newark, New Jersey 07102

Re: Flynn v. Connor,
Docket No. L-6275-71

Dear Judge Giles:

With reference to the present return date of August 19, 1994 in the above matter, I wish to make it clear that, as a matter of record, I, as defendant, have no motion presently pending before the court and that I reserve the right to file a R. 4:50 vacation motion with respect to the July 22, 1994 order of revival.

Otherwise, I wish to note the following corrections to the Opposition I filed on July 28, 1994:

1) Page 2 Separate Defenses: add"3. Waiver of Right of Revival by Executrix Bernice Flynn"; and,
2) Page 10, line 6: "absent assignment" should read: "absent assignment of a revived judgment"; and

3) Page 1: the Motion Day should read:
"5 August, 1994."

Thanking you for your attention and consideration, I am,
Very truly yours,

/s/ John R. Connor
John R. Connor, Pro se

cc: John A. Lombardi, Esq.

APPENDIX "M"

John Anthony Lombardi
[Letterhead]

August 22, 1994

Mr. John R. Connor
380 Wyoming Avenue
Millburn, New Jersey 07041

Re: Flynn v. Connor
Docket No. L-6275-71
Judgment No. J-12090-73

Dear Mr. Connor:

I enclose herewith copy of Order I have prepared and forwarded to Judge Giles in accordance with my understanding of his determination on Friday, August 19, 1994.
Pursuant to Court Rule 4:42-1(c), you should submit any objections in writing to Judge Giles within five (5) days, with a copy being forwarded to me.

Very truly yours,
/s/ John A. Lombardi
JOHN ANTHONY LOMBARDI

JAL/pd
enc.
cc: Honorable F. Michael Giles, J.S.C.

APPENDIX "N"

JOHN ANTHONY LOMBARDI
[Letterhead]

(Proposed Order - Not filed)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION- ESSEX COUNTY
DOCKET NO. L-6275-71
JUDGMENT NO. J-12090-73

EDWARD J. FLYNN,

Plaintiff,

v.

JOHN R. CONNOR,

Defendant.

Civil Action

ORDER AFFIRMING ORDER REVIVING AND UPDATING JUDGMENT (AS ENTERED ON JULY 22, 1994)

This matter being opened to the Court by Defendant, JOHN R. CONNOR, on application to vacate or modify the Order Reviving And Updating Judgment entered in the above matter on July 22, 1994, and the Court having reviewed said Judgment, taking into consideration the objections raised by the Defendant and being satisfied that the Plaintiff was and is entitled to the entry of Order Reviving and Updating Judgment;

It is on this day of August 1994 DETERMINED and ORDERED that the Order Reviving and Updating Judgment as entered on July 22, 1994, be and the same is hereby affirmed.

A copy of this Order shall be forwarded to the Defendant by Plaintiff's attorney within five (5) days of the receipt of the same.

_____

F. MICHAEL GILES, J.S.C.